

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICHARD VOS, individually and as  
successor-in-interest to Gerrit Vos; and  
JENELLE BERNACCHI, individually  
and as successor-in-interest to Gerrit  
Vos,

Plaintiffs,

v.

CITY OF NEWPORT BEACH, a  
governmental entity; RICHARD  
HENRY, NATHAN FARRIS, DAVE  
KRESGE, and DOES 1 through 10,  
inclusive,

Defendants.

Case No. 8:15-cv-00768-JVS (DFMx)

STIPULATED PROTECTIVE  
ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to

1 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
2 procedures that must be followed and the standards that will be applied when a  
3 party seeks permission from the court to file material under seal.

#### 4 B. GOOD CAUSE STATEMENT

5 This action is likely to involve confidential information for which special  
6 protection from public disclosure and from use for any purpose other than  
7 prosecution of this action is warranted. Such confidential and proprietary materials  
8 and information consist of, among other things, confidential business or financial  
9 information, information regarding police tactics and strategies, police officer  
10 personnel files, or other confidential research, development, or commercial  
11 information (including information implicating privacy rights of third parties),  
12 information otherwise generally unavailable to the public, or which may be  
13 privileged or otherwise protected from disclosure under state or federal statutes,  
14 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
15 information, to facilitate the prompt resolution of disputes over confidentiality of  
16 discovery materials, to adequately protect information the parties are entitled to  
17 keep confidential, to ensure that the parties are permitted reasonable necessary uses  
18 of such material in preparation for and in the conduct of trial, to address their  
19 handling at the end of litigation, and serve the ends of justice, a protective order for  
20 such information is justified in this matter. It is the intent of the parties that  
21 information will not be designated as confidential for tactical reasons and that  
22 nothing be so designated without a good faith belief that it has been maintained in a  
23 confidential, non-public manner, and there is good cause why it should not be part  
24 of the public record of this case.

#### 25 2. DEFINITIONS

26 2.1 Action: This pending federal lawsuit and any consolidated or related  
27 actions.

28 2.2 Challenging Party: a Party or Non-Party that challenges the

1 designation of information or items under this Order.

2 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
3 how it is generated, stored or maintained) or tangible things that qualify for  
4 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
5 the Good Cause Statement.

6 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
7 their support staff).

8 2.5 Designating Party: a Party or Non-Party that designates information or  
9 items that it produces in disclosures or in responses to discovery as  
10 “CONFIDENTIAL.”

11 2.6 Disclosure or Discovery Material: all items or information, regardless  
12 of the medium or manner in which it is generated, stored, or maintained (including,  
13 among other things, testimony, transcripts, and tangible things), that are produced  
14 or generated in disclosures or responses to discovery in this matter.

15 2.7 Expert: a person with specialized knowledge or experience in a matter  
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
17 an expert witness or as a consultant in this Action.

18 2.8 House Counsel: attorneys who are employees of a party to this action.  
19 House Counsel does not include Outside Counsel of Record or any other outside  
20 counsel.

21 2.9 Non-Party: any natural person, partnership, corporation, association,  
22 or other legal entity not named as a Party to this action.

23 2.10 Outside Counsel of Record: attorneys who are not employees of a  
24 party to this action but are retained to represent or advise a party to this Action and  
25 have appeared in this Action on behalf of that party or are affiliated with a law firm  
26 which has appeared on behalf of that party, and includes support staff.

27 2.11 Party: any party to this Action, including all of its officers, directors,  
28 employees, consultants, retained experts, and Outside Counsel of Record (and their

1 support staffs).

2 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
3 Discovery Material in this Action.

4 2.13 Professional Vendors: persons or entities that provide litigation  
5 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
6 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
7 and their employees and subcontractors.

8 2.14 Protected Material: any Disclosure or Discovery Material that is  
9 designated as "CONFIDENTIAL."

10 2.15 Receiving Party: a Party that receives Disclosure or Discovery  
11 Material from a Producing Party.

### 12 3. SCOPE

13 The protections conferred by this Stipulation and Order cover not only  
14 Protected Material (as defined above), but also (1) any information copied or  
15 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
16 compilations of Protected Material; and (3) any testimony, conversations, or  
17 presentations by Parties or their Counsel that might reveal Protected Material.

18 Any use of Protected Material at trial shall be governed by the orders of the  
19 trial judge. This order does not govern the use of Protected Material at trial.

20 Defendant City of Newport Beach designates as Protected Material (1) the  
21 complete Orange County District Attorney's Investigative Report on this matter,  
22 including all documents, video and audio files included therein and (2) any and all  
23 police officer personnel files and/or portions thereof.

### 24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations  
26 imposed by this Order shall remain in effect until a Designating Party agrees  
27 otherwise in writing or a court order otherwise directs. Final disposition shall be  
28 deemed to be the later of (1) dismissal of all claims and defenses in this action, with

1 or without prejudice; and (2) final judgment herein after the completion and  
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
3 including the time limits for filing any motions or applications for extension of time  
4 pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

7 Each Party or Non-Party that designates information or items for protection under  
8 this Order must take care to limit any such designation to specific material that  
9 qualifies under the appropriate standards. The Designating Party must designate for  
10 protection only those parts of material, documents, items, or oral or written  
11 communications that qualify – so that other portions of the material, documents,  
12 items, or communications for which protection is not warranted are not swept  
13 unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations  
15 that are shown to be clearly unjustified or that have been made for an improper  
16 purpose (e.g., to unnecessarily encumber or retard the case development process or  
17 to impose unnecessary expenses and burdens on other parties) expose the  
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it  
20 designated for protection do not qualify for protection, that Designating Party must  
21 promptly notify all other Parties that it is withdrawing the inapplicable designation.

22 **5.2 Manner and Timing of Designations.** Except as otherwise provided in  
23 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
24 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
25 under this Order must be clearly so designated before the material is disclosed or  
26 produced.

27 Designation in conformity with this Order requires:

- 28 (a) for information in documentary form (e.g., paper or electronic

1 documents, but excluding transcripts of depositions or other pretrial or trial  
2 proceedings), that the Producing Party affix at a minimum, the legend  
3 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that  
4 contains protected material. If only a portion or portions of the material on a page  
5 qualifies for protection, the Producing Party also must clearly identify the protected  
6 portion(s) (e.g., by making appropriate markings in the margins).

7 A Party or Non-Party that makes original documents or materials available  
8 for inspection need not designate them for protection until after the inspecting Party  
9 has indicated which material it would like copied and produced. During the  
10 inspection and before the designation, all of the material made available for  
11 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has  
12 identified the documents it wants copied and produced, the Producing Party must  
13 determine which documents, or portions thereof, qualify for protection under this  
14 Order. Then, before producing the specified documents, the Producing Party must  
15 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.  
16 If only a portion or portions of the material on a page qualifies for protection, the  
17 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
18 appropriate markings in the margins).

19 (b) for testimony given in deposition that the Designating Party identify  
20 on the record, before the close of the deposition all protected testimony.

21 (c) for information produced in some form other than documentary and  
22 for any other tangible items, that the Producing Party affix in a prominent place on  
23 the exterior of the container or containers in which the information or item is stored  
24 the legend “CONFIDENTIAL.” If only a portion or portions of the information or  
25 item warrant protection, the Producing Party, to the extent practicable, shall identify  
26 the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
28 failure to designate qualified information or items does not, standing alone, waive

1 the Designating Party's right to secure protection under this Order for such  
2 material. Upon timely correction of a designation, the Receiving Party must make  
3 reasonable efforts to assure that the material is treated in accordance with the  
4 provisions of this Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
7 designation of confidentiality at any time that is consistent with the Court's  
8 scheduling order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
10 resolution process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on  
12 the Designating Party. Frivolous challenges, and those made for an improper  
13 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
14 parties) may expose the Challenging Party to sanctions. Unless the Designating  
15 Party has waived or withdrawn the confidentiality designation, all parties shall  
16 continue to afford the material in question the level of protection to which it is  
17 entitled under the Producing Party's designation until the court rules on the  
18 challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
21 disclosed or produced by another Party or by a Non-Party in connection with this  
22 Action only for prosecuting, defending, or attempting to settle this Action. Such  
23 Protected Material may be disclosed only to the categories of persons and under the  
24 conditions described in this Order. When the litigation has been terminated, a  
25 Receiving Party must comply with the provisions of section 13 below (FINAL  
26 DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a  
28 location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
3 otherwise ordered by the court or permitted in writing by the Designating Party, a  
4 Receiving Party may disclose any information or item designated  
5 “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as  
7 well as employees of said Outside Counsel of Record to whom it is reasonably  
8 necessary to disclose the information for this Action;

9 (b) the officers, directors, and employees (including House Counsel) of  
10 the Receiving Party to whom disclosure is reasonably necessary for this litigation;

11 (c) Experts (as defined in this Order) of the Receiving Party to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) the court and its personnel;

15 (e) court reporters and their staff;

16 (f) professional jury or trial consultants, mock jurors, and Professional  
17 Vendors to whom disclosure is reasonably necessary for this litigation and who  
18 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (g) the author or recipient of a document containing the information or a  
20 custodian or other person who otherwise possessed or knew the information;

21 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
22 Action to whom disclosure is reasonably necessary provided: (1) the depositing  
23 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)  
24 they will not be permitted to keep any confidential information unless they sign the  
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
26 agreed by the Designating Party or ordered by the court. Pages of transcribed  
27 deposition testimony or exhibits to depositions that reveal Protected Material must  
28 be separately bound by the court reporter and may not be disclosed to anyone



1 except as permitted under this Stipulated Protective Order; and

2 (i) any mediator or settlement officer, and their supporting personnel,  
3 mutually agreed upon by any of the parties engaged in settlement discussions.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
5 IN OTHER LITIGATION

6 If a Party is served with a subpoena or a court order issued in other litigation  
7 that compels disclosure of any information or items designated in this action as  
8 “CONFIDENTIAL,” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification  
10 shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order  
12 to issue in the other litigation that some or all of the material covered by the  
13 subpoena or order is subject to this Protective Order. Such notification shall include  
14 a copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be  
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with  
18 the subpoena or court order shall not produce any information designated in this  
19 action as “CONFIDENTIAL” before a determination by the court from which the  
20 subpoena or order issued, unless the Party has obtained the Designating Party’s  
21 permission. The Designating Party shall bear the burden and expense of seeking  
22 protection in that court of its confidential material and nothing in these provisions  
23 should be construed as authorizing or encouraging a Receiving Party in this action  
24 to disobey a lawful directive from another court.

25 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
26 PRODUCED IN THIS LITIGATION

27 (a) The terms of this Order are applicable to information produced by a  
28 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information

1 produced by Non-Parties in connection with this litigation is protected by the  
2 remedies and relief provided by this Order. Nothing in these provisions should be  
3 construed as prohibiting a Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to  
5 produce a Non-Party's confidential information in its possession, and the Party is  
6 subject to an agreement with the Non-Party not to produce the Non-Party's  
7 confidential information, then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the Non-Party  
9 that some or all of the information requested is subject to a confidentiality  
10 agreement with a Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Stipulated  
12 Protective Order in this litigation, the relevant discovery request(s), and a  
13 reasonably specific description of the information requested; and

14 (3) make the information requested available for inspection by the  
15 Non-Party, if requested.

16 (c) If the Non-Party fails to object or seek a protective order from this  
17 court within 14 days of receiving the notice and accompanying information, the  
18 Receiving Party may produce the Non-Party's confidential information responsive  
19 to the discovery request. If the Non-Party timely seeks a protective order, the  
20 Receiving Party shall not produce any information in its possession or control that  
21 is subject to the confidentiality agreement with the Non-Party before a  
22 determination by the court. Absent a court order to the contrary, the Non-Party  
23 shall bear the burden and expense of seeking protection in this court of its Protected  
24 Material.

25 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
27 Protected Material to any person or in any circumstance not authorized under this  
28 Stipulated Protective Order, the Receiving Party must immediately (a) notify in

1 writing the Designating Party of the unauthorized disclosures, (b) use its best  
 2 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
 3 person or persons to whom unauthorized disclosures were made of all the terms of  
 4 this Order, and (d) request such person or persons to execute the “Acknowledgment  
 5 and Agreement to Be Bound” that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
 7 PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain  
 9 inadvertently produced material is subject to a claim of privilege or other  
 10 protection, the obligations of the Receiving Parties are those set forth in Federal  
 11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
 12 whatever procedure may be established in an e-discovery order that provides for  
 13 production without prior privilege review. Pursuant to Federal Rule of Evidence  
 14 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
 15 of a communication or information covered by the attorney-client privilege or work  
 16 product protection, the parties may incorporate their agreement in the stipulated  
 17 protective order submitted to the court.

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
 20 person to seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
 22 Protective Order no Party waives any right it otherwise would have to object to  
 23 disclosing or producing any information or item on any ground not addressed in  
 24 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
 25 any ground to use in evidence of any of the material covered by this Protective  
 26 Order.

27 12.3 Filing Protected Material. A Party that seeks to file under seal any  
 28 Protected Material must comply with Civil Local Rule 79-5. Protected Material

1 may only be filed under seal pursuant to a court order authorizing the sealing of the  
2 specific Protected Material at issue. If a Party's request to file Protected Material  
3 under seal is denied by the court, then the Receiving Party may file the information  
4 in the public record unless otherwise instructed by the court.

5 13. FINAL DISPOSITION

6 After the final disposition of this Action, as defined in paragraph 4, within 60  
7 days of a written request by the Designating Party, each Receiving Party must  
8 return all Protected Material to the Producing Party or destroy such material. As  
9 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
10 compilations, summaries, and any other format reproducing or capturing any of the  
11 Protected Material. Whether the Protected Material is returned or destroyed, the  
12 Receiving Party must submit a written certification to the Producing Party (and, if  
13 not the same person or entity, to the Designating Party) by the 60 day deadline that  
14 (1) identifies (by category, where appropriate) all the Protected Material that was  
15 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
16 copies, abstracts, compilations, summaries or any other format reproducing or  
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
18 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
19 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
20 and trial exhibits, expert reports, attorney work product, and consultant and expert  
21 work product, even if such materials contain Protected Material. Any such archival  
22 copies that contain or constitute Protected Material remain subject to this Protective  
23 Order as set forth in Section 4 (DURATION).

24 //

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2  
3 DATED: June 7, 2016

4 \_\_\_\_\_ /s/ \_\_\_\_\_  
5 Jason P. Fowler  
6 Attorneys for Plaintiffs RICHARD VOS, individually and as successor-in-interest  
7 to Gerrit Vos; and JENELLE BERNACCHI, individually and as successor-in-  
8 interest to Gerrit Vos.

9 DATED: June 6, 2016

10 \_\_\_\_\_ /s/ \_\_\_\_\_  
11 Allen Christiansen  
12 Attorneys for Defendants CITY OF NEWPORT BEACH, RICHARD HENRY,  
13 NATHAN FARRIS, and DAVE KRESGE

14 **Attestation**

15 I hereby attest that the concurrence in the filing of the foregoing document  
16 has been obtained from counsel on whose behalf this filing is submitted, and that  
17 such counsel has authorized this filing.

18 DATED: June 7, 2016

19 \_\_\_\_\_ /s/ \_\_\_\_\_  
20 Jason P. Fowler

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22 DATED: June 9, 2016

23   
24 \_\_\_\_\_  
25 Douglas F. McCormick  
26 United States District/Magistrate Judge  
27  
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under  
penalty of perjury that I have read in its entirety and understand the Stipulated  
Protective Order that was issued by the United States District Court for the  
Northern District of California on \_\_\_\_\_ [date] in the case of **Richard Vos,  
et al., v. City of Newport Beach, et al.; Case No. 8:15-cv-00768-JCG-DFM.**

I agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order and I understand and acknowledge that failure to so comply could expose me  
to sanctions and punishment in the nature of contempt. I solemnly promise that I  
will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with  
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Northern District of California for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Stipulated Protective  
Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_